

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.354 OF 2007

IN

NOTICE NO.191/N/2006

IN

NOTICE NO.53/N/06

IN

C.R.NO.409 OF 2004

Mrs.Shobhna Kunnikrishnan
Nambiar ..Petitioner

Vs.

State of Maharashtra & Anr. ..Respondents

Mr.Vinit Jain i/b Girish Kulkarni advocate for
Petitioner
Smt.P.H.Kantharia A.P.P. for the State
Ms.Lata Desai i/b Pallavi Divekar for
Respondent no.2

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CORAM: SMT.V.K.TAHILRAMANI, J.
DATE : DECEMBER 5, 2007

P.C.

1. Heard the learned advocate for the petitioner-original complainant, learned advocate for the respondent no.2-original-accused and the learned A.P.P. for the State.

2. The complaint was filed by the petitioner against Respondent no.2 under Sections 454, 457, 380 r.w. 34 of IPC. The said complaint was lodged

with D.N.Nagar Police Station, Mumbai and it was registered as C.R.No.409 of 2004. After investigation, the police filed 'B' Summary report before the learned Magistrate. Notice came to be issued to the petitioner-original complainant in the said matter. Thereafter, 'B' summary came to be granted by the learned Special Metropolitan Magistrate, 44th Court, Andheri, Mumbai by order dated 26.4.2006. The case of the petitioner is that she was not heard before 'B' summary came to be granted and hence, the said order granting 'B' summary be quashed.

3. It is an admitted fact that notice was issued to the complainant vide Notice No. 53/N/2006. On this fact, there is no dispute between the parties. However, the learned advocate for the petitioner has submitted that the notice was not received by the petitioner. Affidavit has been filed by respondent no.2, wherein it is stated that notice was served on the petitioner. The report of the D.N.Nagar Police Station stating that the petitioner was served with the notice, is annexed to the said affidavit.

4. The learned APP also states that indeed, the notice was served on the petitioner by D.N.Nagar Police Station. From this fact, it is clear that petitioner was served with the notice, however, the petitioner failed to appear before the learned Magistrate and after notice came to be served, the learned Magistrate had granted 'B' summary. In such circumstances, no fault can be found with the action of the learned Magistrate in granting 'B' Summary. No interference is called for. Hence, writ petition is rejected.

[SMT.V.K.TAHILRAMANI, J.]